IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELETRONIC
SERVICES, INC.,
Plaintiff

v. CIVIL ACTION NO. 03-394 ERIE

CENTRAL TRANSPORT
INTERNATIONAL, INC. and
LOGISTICS PLUS, INC.,
Defendants

PRETRIAL MOTIONS

Proceedings held before the HONORABLE

SEAN J. McLAUGHLIN, U.S. District Judge,

in Courtroom C, U.S. Courthouse, Erie,

Pennsylvania, on Tuesday, September 20, 2005.

APPEARANCES:

THOMAS A. PENDLETON, Esquire, appearing on
behalf of the Plaintiff.

JEFFREY D. COHEN, Esquire, appearing on behalf of Defendant Central Transport International, Inc.

W. JOHN KNOX, Esquire, appearing on behalf of Defendant Logistics Plus, Inc.

Ronald J. Bench, RMR - Official Court Reporter

P R O C E E D I N G S

(Whereupon, the proceedings began at 1:30 p.m., on Tuesday, September 20, 2005, in Courtroom C.)

THE COURT: I want to take care of these motions such as they are. And before we break up, to discuss the potential settlement of this case. We have a motion for -- on behalf of Central Transport, a motion for reconsideration. Mr. Cohen, what do you want to tell me?

MR. COHEN: Your Honor, I think the papers speak for themselves. I don't have anything to add.

THE COURT: Then let me get that order on the record. This is an order.

ORDER

Presently pending before the court is a motion for reconsideration filed on behalf of Central Transport. The purpose for a motion for reconsideration, of course, is to "correct manifest errors of law or fact or to present newly discovered evidence." Max's_Seafood_Cafe_by_Lou-Ann_v. Quntieros, 176 F.3d 669 (3rd Cir. 1995). The appropriate grounds for granting such a motion is to -- (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear

error of law or fact to prevent manifest injustice. Having reviewed the criteria, I find none of them applicable. The motion for reconsideration is denied.

There's also a motion for reconsideration of Central Transport's motion for summary judgment insofar as it relates to Count I of the complaint, by plaintiff?

MR. PENDLETON: Correct.

THE COURT: Is there anything else you want to tell me about that?

MR. PENDLETON: Only the fact that the motion by Central Transport was not properly supported because none of the undisputed issues of fact were mentioned in the concise statement. Therefore, because the motion was not properly supported in the first instance, it should not have been granted.

THE COURT: The issue is a pure question of law, it seems to me. That is whether or not there is a private cause of action. Isn't that right, essentially?

MR. PENDLETON: To a certain extent, yes. But I would think that one disputed fact or issue of fact that needs to get resolved is whether or not the Secretary of Transportation or its designee still takes jurisdiction over these types of complaints.

THE COURT: All right. I'm now going to enter an order.

ORDER

Presently pending before the court is a motion for reconsideration filed on behalf of Accu-Spec. In the interest of brevity, I incorporate herein by reference as is fully set forth, the applicable standard for a motion for reconsideration, which I described in conjunction with my previous order.

The question presented here is whether or not a private cause of action exists under 49 U.S.C. Section 14704, et seq. In Count I of the plaintiff's complaint a cause of action is pled against both Logistics and Central Transport claiming damage, claiming monetary damages for damages to goods, specifically the X-ray machine that was shipped.

Having carefully reviewed the matter, I find myself in agreement with the rationale of the court in Hoover_v. Allied_Van_Lines,_Inc., which is 111 P.3d 1076, 2005 WL 1277952. Wherein, the court had an occasion to address or to fashion the extent to which a party may recover damages for damages to goods under 14704. Although, the primary thrust of that discussion involved the entitlement to a claim of attorney's fees. In any event, the court made the following observation:

"In Owner-Operator_Independent_Drivers_v._New_Prime, 192 F.3d 778, 783-84 (8th Cir. 1999), the court interpreted Section 14704(a)(2) to authorize private parties to sue for

damages for carrier conduct in violation of regulations promulgated by the Secretary of Transportation."

The court then continued: "Unfortunately for the Hoovers, their cause of action was not based upon AVL's violation of any regulations promulgated by the Secretary of Transportation ... the Hoovers' lawsuit was limited to recovery of damages to their household goods during shipment. The parties do not disagree the statutory authorization for fees under Section 14706." The court then went on to deny the attorney's fees.

Here, in my view, the plaintiff is not seeking damages in Count I as a result a "violation of any regulations," it is seeking damages for damages to the goods. Which is precisely the type of damage that the Carmack

Amendment anticipates.

Consequently, the motion for reconsideration is denied, and Central's motion for summary judgment as to Count I is granted.

Now, incidentally, Mr. Knox, you did not move for summary judgment, did you?

MR. KNOX: I did not, judge.

THE COURT: Then we have the plaintiff's motion to deem request for admissions admitted due to insufficient responses. Assuming that these are admitted or deemed admitted, as a practical matter, what does it mean, are these

largely directed at damages?

MR. PENDLETON: They are. And they establish most of the damages that Accu-Spec is claiming with respect to 80 percent of it.

THE COURT: Have you had a chance to see his motion?

MR. COHEN: I briefly reviewed the motion and jotted down some notes, I didn't know we were going to address it today. I could summarize my thoughts of this.

THE COURT: Why don't you do that?

MR. COHEN: Your Honor, with regards to the reasonable charges there for Central Transport, there are three requests or requests for admission which counsel for Accu-Spec is requesting to be deemed admitted. Number three, which essentially asks for the reasonability of charges to be deemed admitted. There's one main problem with deeming the charges reasonable. In this case --

THE COURT: Which charges are we talking about?

MR. COHEN: They're talking about, let me look at the language in the first request for admission. There's a group of documents attached to the request for admission, including correspondence and some invoices and some billings and some modifications to bills. This request for admission says the charges represented by these invoices was reasonable. The first thing we had trouble with, there was no set numbers associated with these attachments. So it required a judgment

call on the part of Central Transport. One of Central Transport's main defenses is whether certain charges demanded by Accu-Spec are not recoverable pursuant to the Carmack Amendment.

THE COURT: Because they're consequential --

MR. COHEN: Consequential, incidental damages.

THE COURT: That doesn't go to the reasonableness of recoverability.

MR. COHEN: That's true. The issue becomes really if they are reasonable, I guess the next step for Central Transport is a motion in limine to preclude --

THE COURT: This sort of smacks of how many angels can you fit on the head of a pin, it's somewhat ridiculous. The motion for requests of admission is denied. This will just shake itself out if it has to go to trial. Counsel, can I see you in chambers, we'll talk about getting this thing resolved.

MR. KNOX: Judge, if I may, just with respect to the count on the 14704, you correctly pointed out we did not file a motion with respect to that.

THE COURT: Right. Are you going to orally move now?

MR. KNOX: Yes, I'm orally moving now.

THE COURT: It's granted.

(Whereupon, at 1:40 p.m., the proceedings were

concluded.)

- - -

C E R T I F I C A T E

I, Ronald J. Bench, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

____

Ronald J. Bench